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HB 2271, HD 1 RELATING TO COUNTIES

Statement for
House Committee on
Judiciary
Public Hearing - March 2, 1988

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SECTION 1 of HB 2271, HD 1 would amend HRS 205A-44, HRS 171, and HRS 7-3. The amendments proposed for HRS 205A-44 would add dead coral and coral rubble to the list of beach or marine deposits whose removal is prohibited within the shoreline area; remove reference to the area seaward of the shoreline (to be covered under 171); limit the amount of materials that can be removed from the shoreline area for personal, non-commercial use and allow for stricter limitations on this removal by the counties; delete the present limitation to specific public beaches where sand replenishment in the shoreline area is now permitted; delete the EIS requirement for mining or taking of sand for replenishment of beaches in the shoreline area but substitute a requirement for an environmental assessment; permit beach cleaning for state or county maintenance purposes; require that sand removed for cleaning or maintenance be placed on adjacent areas unless significant turbidity will result and require an environmental assessment for cleaning or maintenance purposes.

SECTION 2 of HB 2271 HD 1 would amend HRS Chapter 171 by adding a new section that would prohibit the mining or taking of various marine deposits seaward of the shoreline with certain exceptions:

1. Allows taking of beach materials in small specified quantities for personal, non-commercial use,
2. Allows mining or taking of sand with a permit under HRS 183-41, except at Hakipu'u sandbar offshore of Moli'i Fishpond, Oahu,

3. Allows cleaning and maintenance of drainage structures and mouths of streams and requires that the material removed be placed on adjacent area unless such placement will cause turbidity.

SECTION 3 of HB 2271 HD 1 would repeal HRS 7-3 as provisions are covered under other statutes.

We concur with many of the proposed amendments and will refrain from commenting on these in the interest of focusing on those issues that we believe will be problematic. This statement does not represent an institutional position of the University of Hawaii.

SECTION 1

Amendments on page 1, paragraph (2) remove restrictions as to what shoreline areas can be replenished and will permit shoreline enhancement projects to be based on the individual merits of each site. It should be noted that the amendments proposed for paragraph (2) have made some significant changes in the focus and intent of HRS Chapter 205A-44. Specifically they remove the limitations on sand beach replenishment to public beaches and would permit the state or county to take sand from the shoreline area for replenishment to the shoreline area without limitation to sand replenishment on public beaches. Since the statutes require that the sand replenishment be in the public interest, it seems likely that most shoreline area replenishment projects will involve public beaches even though the amended language is not so restrictive.

The specific language on page 2, lines 1 and 2 that would require an environmental assessment for the proposed project to be "accepted" is procedurally incorrect. Any action involving the shoreline area as defined in Section 205A-41 requires an environmental assessment (HRS 343-5(3)). After assessment, a determination is made as to whether or not an EIS shall be required. An EIS "shall be required if the agency finds that the proposed action may have a significant effect on the environment" (HRS 343-5(c)). Hence it is redundant and unnecessary to include the specific requirements for an EIS as is the present language of HRS 205A-44(2). When this statute was originally drafted, great public concern was expressed as to the potential environmental effects of offshore sand mining. Hence the direct requirement for an EIS was inserted into the bill. We had suggested in our previous testimony that since assessment under HRS 343 is already required, specific requirement for either an EIS or EA under 205A-44 was unnecessary. However, to maintain the emphasis desired by the drafters of this statute, it would be more correct to change the language to reflect the requirement for an environmental assessment. We suggest that page 1, lines 16 and 17 and page 2, lines 1 and 2 be amended to read as follows:

...provided that for the purpose of this paragraph an environmental assessment pursuant to Chapter 343 shall be required.

One additional comment on Section 1 paragraph 2 is offered for your consideration. Since the original purpose and intent of paragraph (2) of HRS 205A-44(a) was to provide for beach replenishment with offshore sands and since this provision is now being addressed in SECTION 2 of the bill under HRS 171, it may be most appropriate to delete paragraph 2 of HRS 205A-44(a) in its entirety.

The proposed amendments on page 2, paragraph 3, addressing cleaning and maintenance of shorelines are appropriate. However, the statutory requirement for an environmental assessment is not. As we have indicated, any action in the shoreline area requires an environmental assessment under Chapter 343-5(3). The only exception to this requirement is in the case where the proposed action falls within a list of classes of actions that are exempt from the preparation of an environmental assessment under existing statutes (HRS 343-6(8)).

SECTION 2

SECTION 2 of HB 2271 HD 1 deals with prohibitions and exceptions relevant to the mining or taking of various beach deposits seaward of the shoreline.

Paragraph (1) would permit the taking of small amounts of marine deposits seaward of the shoreline, for personal uses and we concur with the rationale and appropriateness of the proposed amendment.

Paragraph (2) authorizes the mining or taking of sand and other marine deposits seaward of the shoreline by permit from DLNR, but excluding Hakipu'u sandbar offshore of Molii fishpond, Oahu.

This paragraph fails to recognize the previous emphasis in the development of the legislation pertinent to the taking of sand that such taking be limited to purposes of public beach replenishment. As presently drafted HB 2271 HD 1 permits taking of sand or marine deposits without limitation as to the purpose.

While we recognize that the use of offshore deposits for other than beach replenishment may be environmentally acceptable in some areas, we believe that such use should be addressed in separate legislation. There is a basic difference between the environmental implications and the review needed for the recycling of offshore sand such as the proposed use of these materials for shoreline area (beach) replenishment and the studies and possible guidelines that would be required for the consumptive use of such deposits for construction.

We suggest that paragraph (2) of Section 2 be amended by adding:

(2) for enhancement of shoreline areas with a permit authorized under section 183-41....

Paragraph (3). The proposed amendment to page 4, lines 1-5 regarding the requirement for an environmental assessment for clearing and maintenance activities under this paragraph is unnecessary inasmuch as environmental assessments of activities in the shoreline area and seaward (conservation area) are already subject to environmental assessment under HRS 343-5(2) and (3). If specific language is desired, we suggest that page 4, lines 2-5 be amended to read, "The removal of such materials under this paragraph shall [require an environmental assessment] be pursuant to Chapter 343. [to determine whether this action is declared exempt.]"

We strongly support the intent of this bill with the amendments we have suggested. We appreciate the opportunity to provide our comments and would be pleased to work with your committee or members of DLNR if we can be of help in incorporating testimony from this hearing.